

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION**

KENNETH WILLIAMS

PETITIONER

V.

NO. 1:18-CV-138-DMB-DAS

STATE OF MISSISSIPPI

RESPONDENT

ORDER OF DISMISSAL

Kenneth Williams' petition for a writ of habeas corpus is before the Court for consideration of the Report and Recommendation of United States Magistrate Judge David A. Sanders. Doc. #11.

I
Procedural History

On or about July 10, 2018, Kenneth Williams filed a petition for a writ of habeas corpus in the United States District Court for the Northern District of Mississippi challenging his 1991 conviction and sentence for murder. Doc. #1. On October 29, 2018, the respondent filed a motion to dismiss the petition as untimely. Doc. #8. Williams did not respond to the motion to dismiss.

On February 13, 2019, Untied States Magistrate Judge David A. Sanders issued a Report and Recommendation recommending that the respondent's motion to dismiss be granted and that Williams' petition be dismissed as untimely filed. Doc. #11 at 8. No objections to the Report and Recommendation were filed.

II
Analysis

Under 28 U.S.C § 636(b)(1)(C), “[a] judge of the court shall make a de novo determination of those portions of the report … to which objection is made.” “[W]here there is no objection, the Court need only determine whether the report and recommendation is clearly erroneous or contrary

to law.” *United States v. Alaniz*, 278 F.Supp.3d 944, 948 (S.D. Tex. 2017) (citing *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989)). The Court, having reviewed the Report and Recommendation, concludes that it is neither clearly erroneous nor contrary to law. Accordingly, the Report and Recommendation is adopted as the order of the Court, and Williams’ petition is dismissed.

III **Certificate of Appealability**

This Court must “issue or deny a certificate of appealability when it enters a final order adverse to the applicant.” Rule 11 of the Rules Governing Section 2254 Proceedings for the United States District Courts. A certificate of appealability (“COA”) will issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). For cases rejected on their merits, a movant “must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong” to warrant a COA. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). To obtain a COA on a claim rejected on procedural grounds, a movant must demonstrate “that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Id.* Based on the *Slack* criteria, the Court finds that a COA should not issue in this case.

IV **Conclusion**

The February 13, 2019, Report and Recommendation [11] is **ADOPTED** as the order of this Court. The respondent’s motion to dismiss [8] is **GRANTED** and this case is **DISMISSED**. A certificate of appealability is **DENIED**.

SO ORDERED, this 8th day of March, 2019.

/s/Debra M. Brown
UNITED STATES DISTRICT JUDGE